the operation for 14 days so as to enable the plaintiff within that period to enter the premises and remove all his goods and other properties.

As regards the question of costs, I considered that in the circumstances neither of the parties deserved any costs. In particular, I refused costs to the defendants on both the motions. Principally they succeeded on the points raised by me.

Order accordingly.

Solicitors: *Hoh & Mas; Robert WH Wang & Woo.*

Reported by *Olivia Menon*

Frans Furniture Pte Ltd v Good Property Land Development Pte Ltd

HIGH COURT (SINGAPORE) — ORIGINATING SUMMONS NO 1037 OF 1989
CHUA J
18 APRIL 1991

Land Law — Agreement for sale and purchase of land — Construction of condition 7 of The (Revised) Singapore Conditions of Sale — Vendor sent late notice to complete — Vendor included claim for compensation for increase in area of premises in completion account — Vendor's claim for compensation for increase in area of premises disputed by purchaser who claimed liquidated damages for late completion delayed by vendor's wilful default

Land Law — Completion account — Function — Whether vendors' failure to provide revised completion account a sufficient reason for plaintiffs not to complete the sale

Words and Phrases — 'Contumacious' — The (Revised) Singapore Conditions of Sale, condition 7

Words and Phrases — 'Wilful default' — The (Revised) Singapore Conditions of Sale, condition 7

The plaintiffs and the defendants entered into an agreement ('the agreement') under which the defendants agreed to sell to the plaintiffs a piece of property ('the property'). The sale was subject to the terms and conditions in The (Revised) Singapore Conditions of Sale. Clause 13(1) of the agreement provided that completion was to take place 14 days after receipt by the purchaser of the vendor's notice to complete and cl 13(2) provided that such notice to complete be given by the vendor on or before 31 December 1988.

The defendants did not issue a notice to complete until 3 March 1989. Accompanying the notice to complete was a completion account pursuant to which the defendants made a claim for $160,547.10 representing an increase in the floor area of the property of 3.278% over the original area. The plaintiffs maintained that the defendants were not entitled to compensation for the increase in floor area. On 26 December 1989, the sale and purchase of the property was completed without payment of the defendants' claim for the additional sum of $160,547.10.

The action concerned the plaintiffs' claim against the defendants for interest for late completion under condition 7 of The (Revised) Conditions of Sale and the defendants were counterclaiming against the plaintiffs for interest on the late completion.

Condition 7 provided that if from any cause whatever (other than the wilful default of the vendor) the purchase shall not be completed on the day fixed on completion, the purchaser shall pay the vendor interest for late completion and also the purchaser shall not be entitled to any compensation for the vendor's delay unless contumacious.

Held, dismissing the plaintiffs' claim and allowing the defendants' counterclaim:

(1) There should not be any difference in meaning between the words 'contumacious' and 'wilful default' in condition 7. The purchaser will only be relieved from payment of interest under condition 7 if he can show (a) that the vendors had been in default; (b) that such default was wilful; and (c) that the wilful default was the direct cause of the delay in completion.

(2) Clause 13(1) of the agreement does not specifically provide that the notice to complete should be accompanied by a completion account. The function of a completion account is to inform the purchaser of the amount due from him on completion. There is no fundamental principle that if the vendor fails to give a completion account to the purchaser, the purchaser would be under no obligation to complete on the day fixed on completion.

(3) It appeared from the correspondence between the parties that it was the defendants who were insisting on the plaintiffs completing the sale and purchase, while the plaintiffs were insisting that the defendants submit a revised completion account. The plaintiffs had been given a completion account and the plaintiffs could not say that they did not know the amount payable on completion as the sums claimed by the defendants were known to the plaintiffs.

(4) As regards the plaintiffs' claim for liquidated damages, it was clear that the defendants by failing to give the notice to complete by 1 December 1988 was liable for liquidated damages under cl 13(2) of the agreement. However, the defendants had told the plaintiffs that they could deduct the amount from the completion account. As regards the defendants' claim for the increase in floor area, the plaintiffs could have paid the amount claimed to their own or the defendants' solicitors to be held as stakeholders pending the decision of the court and tendered to the defendants the remainder of the purchase moneys. Alternatively, the plaintiffs could under condition 8 of The (Revised) Singapore Conditions of Sale deposit the remainder of the purchase moneys in a bank and give written notice thereof to the defendants. Thus the plaintiffs were able to comply with cl 13(1) of the agreement and complete the sale and purchase within 14 days of the defendants' notice to complete. The absence of a revised completion account was not a sufficient reason for not completing the sale. As such, the delay in completion was attributable solely to the default of the plaintiffs and they had to pay the defendants interest for the late completion. If the plaintiffs had tendered the remainder of the purchase moneys or deposited them in a bank under condition 8 and the defendants had failed to complete, then the defendants would have been responsible for the delay.

Case referred to

1 *Toh Teck Sun* v *Mandarin Gardens Pte Ltd* [1988] 2 MLJ 276 (folld)

Jane Ittogi (*Chong Yee Leong* with her) for the plaintiffs.
Pryscilla Shaw for the defendants.

Cur Adv Vult

Chua J: By this originating summons the plaintiffs claim against the defendants the following reliefs:

(a) an order that the defendants do complete the sale and purchase of the property described as Unit 02-A 2nd Storey, Meridien Shopping Centre/Hotel Meridien, Singapore, now known as No 100, Orchard Road, #02-100, Meridien Shopping Centre ('the said property') under a sale and purchase agreement dated 22 October 1983 between the plaintiffs and the defendants ('the agreement') and execute a transfer to the plaintiffs of the said property at the contract price of $4,897,670;
(b) an order that the defendants do pay the plaintiffs the sum of $64,669.37 as liquidated damages calculated in accordance with cl 13(2) of the agreement for the delay in the issuance of the notice to complete, to be deducted from the balance contract price;
(c) an order that the defendants do pay the plaintiffs liquidated damages calculated in accordance with cl 7 of The (Revised) Singapore Conditions of Sale for late completion from 3 March 1989 till the date of completion, to be deducted from the balance contract price.

The facts are these. By an agreement dated 22 October 1983, between the plaintiffs and the defendants ('the agreement') the defendants agreed to sell to the plaintiffs the property described in prayer (a) of the originating summons ('the said property') for $4,897,670.

The said property was sold subject to the terms and conditions contained in the agreement and to The (Revised) Singapore Conditions of Sale.

By cl 13(1) of the agreement completion was to take place 14 days after the receipt by the purchaser of the notice to complete from the vendor and by cl 13(2) such notice to complete shall be given by the vendor on or before 31 December 1988.

No notice to complete was in fact given on or before 31 December 1988. However, the defendants subsequently issued through their solicitors a notice to complete dated March 1989. Accompanying the notice was a statement of completion account which stated (inter alia):

Increase in floor area from 5,503 sq ft to 5,683.39 sq ft at $890 per sq ft (per strata title plan)	$160,547.10

By their letter dated 4 March 1989, to the defendants' solicitors, the plaintiffs' solicitors (a) disagreed with the completion account and contended that 'by cl 11 of The (Revised) Singapore Conditions of Sale your clients are not entitled to compensation for the increase in floor area' and (b) contended that the defendants were liable for liquidated damages amounting to $64,669.37 for late completion in accordance with cl 13(2) of the agreement. They asked for a revised completion account immediately, failing which the plaintiffs would hold the defendants responsible for liquidated damages in failing to give a correct completion account.

By letter dated 23 March 1989 to the plaintiffs' solicitors, the defendants' solicitors stated that as the increase in floor area represented 3.278% of the original area, they required the full payment of the sum of $160,547.10 reflected in the completion account to be paid on completion.

Thereafter, further correspondence passed between the parties. Neither party gave way. The defendants insisted that the plaintiffs pay in full for the increase in floor area and complete the purchase and the plaintiffs insisted that the defendants furnish a revised completion account. Completion did not take place.

Upon the petition of Societe Generale, a creditor, an order for winding up the defendant company was made on 28 July 1989 and liquidators were appointed. On 25 October 1989, the plaintiffs filed the present originating summons.

On 7 November 1989, the defendants' solicitors wrote a 'without prejudice' letter to the plaintiffs' solicitors offering several terms of completion. On 16 November 1989, the plaintiffs' solicitors wrote to the defendants' solicitors in response to their letter of 7 November 1989, stating that the plaintiffs were prepared to complete on the terms specified in the letter of 7 November 1989.

Subsequently, on 26 December 1989, the sale and purchase of the said property was completed, without payment of the additional sum of $160,547.10, pursuant to an agreement between the parties that such completion be subject to any adjustments to the final balance of purchase money payable to the defendants, after the determination by the court on the following claims of the defendants against the plaintiffs:

(a) for the excess area of 180.39 sq ft valued at $160,547.10;
(b) for interest for late completion on the part of the plaintiffs for the period 17 March 1989, to the date of completion 26 December 1989, in accordance with condition 7 of The (Revised) Singapore Conditions of Sale.

As a result of the agreement between the parties, the defendants have paid to the plaintiffs the $64,669.37 liquidated damages claimed by the plaintiffs in prayer (b) of the originating summons. The plaintiffs are now claiming against the defendants damages for late completion under condition 7 of The (Revised) Singapore Conditions of Sale (prayer (c)).

The defendants are not pursuing their claim against the plaintiffs for the increase in floor area of 180.39 sq ft valued at $160,547.10 but they counterclaim against the plaintiffs for interest for late completion for the period 17 March 1989, to date of completion, 26 December 1989, in accordance with condition 7 of The (Revised) Singapore Conditions of Sale.

Condition 7 of The (Revised) Singapore Conditions of Sale provides:

> 7 If from any cause whatever (other than the wilful default of the vendor) the purchase shall not be completed on the day fixed for completion, the purchaser shall pay to the vendor interest on the balance of the purchase money at the rate of eight per cent per annum, or the vendor may elect to treat the actual day of completion as the day fixed for completion, and in that case shall be entitled to the rents and profits less outgoings (to be apportioned if necessary) up to the actual day of completion in lieu of interest as aforesaid. The purchaser shall not be entitled to any compensation for the vendor's delay unless contumacious. The stipulations contained in this clause are without prejudice to the rights under any other of these conditions.

Under the second part of condition 7 a purchaser is entitled to compensation for the vendor's delay to complete, if such delay is 'contumacious'.

There is no legal definition of the word 'contumacious'. The *Shorter Oxford Dictionary* defines 'contumacious' as 'exhibiting contumacy; stubbornly perverse, insubordinate, rebellious' and 'contumacy' as 'perverse and obstinate resistance of authority'. *Longman Dictionary of the English Language* (1984) defines it as 'stubbornly disobedient; rebellious'.

The counterclaim of the defendants against the plaintiffs for interest for late completion is based on the first part of condition 7, which requires the purchaser (plaintiffs) to pay interest if completion is delayed from any cause other than the wilful default on the part of the vendor (defendants).

In my view there should not be any difference in meaning between 'contumacious' and 'wilful default' in condition 7.

The submission of the plaintiffs is that the delay in completion of the sale was caused by the defendants and that the defendants' delay was contumacious/a wilful default and they are entitled to damages to be assessed. The defendants submit that they were not in wilful default and the plaintiffs have to pay them interest for late completion.

The purchaser will be relieved from payment of interest under the first part of condition 7 only if he can prove (a) that the vendor has been in default; (b) that such default was wilful and (c) that the wilful default was the direct cause of the delay in completion.

What meaning the authorities have placed on 'wilful default' is summarized in *Emmet on Titles* (19th Ed) para 7.026:

> 'Default' is a purely relative term, just like negligence — it means nothing more, nothing less, than not doing what is reasonable under the circumstances — not doing something which you ought to do, having regard to the relations which you occupy towards the other persons interested in the transaction. The other word which it is sought to define is 'wilful'. As used in courts of law it generally implies nothing blameable, but merely that, there being a person who is acting as a free agent, that which has been done arises from the spontaneous act of his will' (Bowen LJ in *Re Young and Harston's Contract* (1885) 31 Ch D 168), where it was held that a vendor was guilty of wilful default by going abroad two days before the time known by him to have been fixed for completion). This definition makes it clear that a default may be 'wilful' even though 'moral delinquency, intentional delay, wilful obstruction on the part of the vendor may all be absent' (*Re Hetling and Merton's Contract* [1893] 3 Ch 269, 281). But as a definition of 'default' itself, Wilberforce J after quoting the first sentence, has said of it: 'That, with great respect, does not seem to me to enlighten the matter to any great extent. It simply transfers the basic interpretation to another set of considerations, namely, what one ought to do. One is still faced with the question of deciding what in fact the vendor ought to do in relation to this matter' (*Re Hewitt's Contract* [1963] 1 WLR 1298, at p 1303). He proceeded to draw a distinction, in effect, between difficulties foreseen by the vendor, who hoped but failed to overcome them, and unforeseen occurrences, only delay caused by the former being due to wilful default (he followed dicta in *Re Hetling and Merton's Contract*, ante).
>
> An honest mistake or oversight on the part of a vendor is not wilful default by him. An example of such a mistake is a misstatement of the title to part of the property by neglect to look at the deeds (*Re Mayor of London and Tubbs' Contract* [1984] 2 Ch 524). Where, however, the vendor persists in a mistake when it is called to his attention his default will be regarded as wilful (*Bennett* v *Stone* [1903] 1 Ch 509), although this may not be the case where the question at issue was a difficult one so that the vendor's action could not be regarded as clearly mistaken.
>
> Examples of wilful default are: the omission to deliver an abstract until after the time fixed for completion (*Wallis* v *Sarel* (1852) 5 De G & Sm 429); the failure of the vendor to obtain the concurrence of necessary parties (*Re Earl of Strafford and Maples* [1896] 1 Ch 235).
>
> In the case of *Re Bayley-Worthington and Cohen's Contract* [1909] 1 Ch 648, the condition was that the purchaser should not be called on to pay interest if the delay was not caused by his neglect or default. The purchaser had made an objection going to the root of title but the House of Lords ultimately decided that the objection was not well founded. It was held by Parker J that the delay resulting from these proceedings was caused by the default of the purchaser.

I have to consider, first, whether the delay in the completion of the sale was attributable to the default of the defendants; and secondly, whether the default, if any, has been wilful.

The defendants, under cl 13(2) of the agreement, had to serve the notice to complete on or before 31 December 1988. This the defendants failed to do. The plaintiffs could treat the agreement as repudiated and recover the sum paid on account of the purchase money with interest thereon. Alternatively, the plaintiffs could take a conveyance when the defendants were ready and able to convey and recover damages from the defendants' breach of the agreement in delaying completion.

The plaintiffs allowed the date for completion to go by and on 3 March 1989, the defendants served the notice to complete. The completion was to be within 14 days of the receipt of the notice. Accompanying the notice was a statement of completion account which included the sum of $160,547.10 for increase in floor area of 180.39sq ft.

It is clear that the defendants by failing to give the notice to complete by 31 December 1988, was liable for liquidated damages under cl 13(2) of the agreement.

The conduct and attitude of the parties can be gathered from the events that followed after the defendants had given the notice to complete on 3 March 1989.

The plaintiffs straightaway on 4 March 1989, objected to the defendants' claim for the sum of $160,547.10, pointing out that under condition 11 of The (Revised) Singapore Conditions of Sale, the defendants were not entitled to compensation for the increase in floor area and contended that the defendants were liable for liquidated damages amounting to $64,669.37 for late completion under cl 13(2) of the agreement. The plaintiffs asked for a revised completion account immediately, failing which the plaintiffs would hold the defendants responsible for further liquidated damages in failing to give a correct completion account.

On 17 March 1989, the defendants wrote to the plaintiffs regarding the plaintiffs' claim for liquidated damages under cl 13(2) of the agreement. The plaintiffs were informed that the defendants had applied to the Controller of Housing for extension of time to give the notice to complete, and were awaiting the outcome of the application; that pending the outcome of the application and provided that the plaintiffs complete the purchase on 17 March 1989, the plaintiffs could deduct the amount of liquidated damages computed by the defendants as $63,642.87 from the completion account which said sum be held by the plaintiffs' solicitors as stakeholders pending the controller's decision.

On 18 March 1989, the plaintiffs replied accusing the defendants of insincerity as the date line of 17 March 1989 was not capable of being complied with by the plaintiffs and that the defendants had not addressed themselves to the plaintiffs' objection to the defendants' claim for compensation for increase in floor area. The plaintiffs asked for a revised completion account.

On 23 March 1989, the defendants informed the plaintiffs that as the increase in floor area represented 3.278% of the original area they required the full payment of the $160,547.10 reflected in the completion account to be paid in completion.

On 25 March 1989, the plaintiffs replied that the increase in floor area was not of such a substantial or vital nature as to entitle the defendants to claim compensation under condition 11 of The (Revised) Singapore Conditions of Sale. The plaintiffs again asked for a revised completion account.

On 29 March 1989, the plaintiffs asked the defendants for the revised completion account 'as soon as possible'.

On 30 March 1989, the defendants informed the plaintiffs that they were unable to agree with the plaintiffs' view as to the increase in floor area and required the full sum of $160,547.10 to be paid.

On 10 May 1989, the defendants informed the plaintiffs that the defendants had executed the lease in respect of the said property and asked the plaintiffs when they intended to complete the matter.

On 1 June 1989, the defendants wrote and referred to their notice to complete of 3 March 1989, and reminded the plaintiffs that up to date the plaintiffs had failed to complete the purchase and gave notice that unless the plaintiffs completed the purchase within seven days thereof, the defendants would be compelled to commence proceedings and that interest for late completion was chargeable against the plaintiffs.

On 28 July 1989, an order for winding up the defendant company was made on a creditor's petition.

On 4 August 1989, the plaintiffs wrote to the defendants reiterating their view that the increase in floor area of 3.27% was not substantial within the ambit of condition 11 of The (Revised) Singapore Conditions of Sale and expressed the view that the defendants were obliged to complete the sale at the contract price. The plaintiffs also informed the defendants that they were prepared and had always been prepared to complete the sale upon payment of the balance purchase money less liquidated damages for late completion; that as agreed the amount deducted for liquidated damages would be held by the plaintiffs' solicitors as stakeholders pending the outcome of the defendants' application to the Controller of Housing for extension of time; that if the plaintiffs' offer to complete was not accepted by the defendants within the next seven days, the plaintiffs

would apply to court for an order that the defendants complete at the contract price.

It appears from the correspondence that passed between the parties that it was the defendants who were insisting on the plaintiffs completing while the plaintiffs were insisting on the defendants submitting a revised completion account.

Under cl 13(1) of the agreement, the sale and purchase of the said property was to have taken place at the office of the defendants' solicitors Messrs Lee & Lee 14 days after the receipt by the defendants of the notice to complete, ie on 17 March 1989.

Clause 13(1) does not specifically provide that the notice to complete should be accompanied by a completion account. The stand taken by the plaintiffs' solicitors was that a completion account was fundamental in conveyancing proceedings and that the plaintiffs were entitled to one as a matter of right as purchasers.

The function of a completion account is as stated by Chan Sek Keong JC (as he then was) in *Toh Teck Sun* v *Mandarin Gardens Pte Ltd.*[1] It is to inform the purchaser of the amount due from him on completion. It fulfils no other function. As Chan Sek Keong JC said, there is no fundamental principle that when the vendor fails to give a completion account to a purchaser, the purchaser is under no obligation to complete on the date fixed for completion.

In this case, the plaintiffs were given a completion account. The plaintiffs disputed the defendants' claim for the increase in floor area. The disputed sum was known to the plaintiffs. The plaintiffs' claim for liquidated damages under cl 13(2) of the agreement was also known to the plaintiffs as it was computed by the defendants and the plaintiffs did not dispute the figure.

The plaintiffs could not say that they could not complete because they did not know what was payable on completion. As regards their claim for liquidated damages, the defendants had told them they could deduct the amount from the completion account. As regards the defendants' claim for increase in floor area, the plaintiffs could pay the amount claimed by the defendants to their own or the defendants' solicitors to be held as stakeholders on an interest bearing account to abide by the decision of the court, and tender to the defendants the remainder of the purchase money. Alternatively, the plaintiffs could, if they felt it prudent to do so, under condition 8 of The (Revised) Singapore Conditions of Sale, deposit the remainder of the purchase money in a bank of good repute upon a deposit account bearing interest in their name or their solicitors' and give written notice thereof to the defendants.

Instead of tendering the remainder of the purchase money to the defendants or taking action under condition 8, the plaintiffs issued an ultimatum on 4 August 1989, to the defendants to complete, notwithstanding that the defendants have been wound up and the fact that they had not tendered the remainder of the purchase money.

The plaintiffs were able to comply with cl 13(1) of the agreement. The defendants have shown they were ready and able to complete. In my view, the absence of a revised completion account was not a sufficient reason for not completing the sale.

If the plaintiffs had tendered the remainder of the purchase money or deposited it in a bank under condition 8 and the defendants had refused to complete, the defendants would have been responsible for the delay.

I find that the delay in completion was attributable solely to the default of the plaintiffs. They must, therefore, pay to the defendants interest at 8% on the remainder of the purchase money for the period 17 March 1989, to the date of actual completion, 26 December 1989.

The plaintiffs, therefore, fail in their claim against the defendants for damages and they will have to pay to the defendants the costs of these proceedings.

Plaintiffs' claim dismissed; defendants' counterclaim allowed.

Solicitors: *Shook Lin & Bok; Lee & Lee.*

Reported by *Teoh Ai Lin*